

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TONY D. WALKER,

Plaintiff,

v.

Case No. 11-CV-995

**GARY HAMBLIN, JAMES R. SCHWOCHERT,
RICHARD W. PHILLIPS, RICK A. RASMUSSEN,
MARC W. CLEMENTS, KAREN LARSEN,
and JOANNE BOVEE,**

Defendants.

ORDER

Plaintiff has filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). He contends that the court's March 14, 2013, order granting defendants' motion for summary judgment should be vacated because: (1) the decision is based on an erroneous conclusion of law; (2) the decision is based on clearly erroneous factual findings; (3) the record contains no evidence upon which the court could have rationally based its decision; and (4) the court failed to apply the correct legal standard. Defendants oppose the motion.

Federal Rule of Civil Procedure 60(b) enables a court to grant relief from a judgment under the particular circumstances listed in the rule. Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995). Those are:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment

that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Here, plaintiff's motion raises issues that do not fall under Rule 60(b). His arguments should have been raised in a timely direct appeal from the order granting defendants' motion for summary judgment. See Bell v. Easterman Kodak Co., 214 F.3d 798, 800-01 (7th Cir. 2000); Kiswani v. Phoenix Sec. Agency, Inc., 584 F.3d 741, 743 (7th Cir. 2009).

IT IS THEREFORE ORDERED that plaintiff's motion for relief from judgment (Docket 77) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 29th day of July, 2013.

s/ Lynn Adelman

LYNN ADELMAN
District Judge